

## **MINUTES**

### **MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN MIKE WHEAT**, on January 10, 2005 at 10:00 A.M., in Room 303 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Mike Wheat, Chairman (D)  
Sen. Brent R. Cromley (D)  
Sen. Aubyn Curtiss (R)  
Sen. Jon Ellingson (D)  
Sen. Jesse Laslovich (D)  
Sen. Jeff Mangan (D)  
Sen. Dan McGee (R)  
Sen. Lynda Moss (D)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)  
Sen. Gary L. Perry (R)  
Sen. Jim Shockley (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch  
Mari Prewett, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 4, SB 3, 1/6/2005  
Executive Action: SB 37

**HEARING ON SB 4**

**Opening Statement by Sponsor:** **SEN. KEN (KIM) HANSEN, SD 17, HARLEM** opened the hearing on SB 4, Revise liability related to certain recreational activity. **SEN. HANSEN** informed the Committee that SB 4 was Act which would define the legal responsibilities of participants in recreational activities, organizers and sponsors of competitive events. **SEN. HANSEN** stated that the bill would discourage claims, prevent sponsors from being held liable and would not affect product or equipment liability issues.

**Proponents' Testimony:**

**Marvin L. Wagner, Billings, Montana** stated that he was speaking for SB 4 as a former participant in many of the activities available in the state. He went on to list several of those activities he had participated in. **Mr. Wagner** went on to say that he felt these activities were being threatened through litigation and expense of insurance coverage. He concluded by asking the Committee to pass the bill for the benefit of time-specific sports and continue to bring revenue into the State as a result of these activities.

**Bob Gilbert, Executive Director and Lobbyist for Walleyes Unlimited of Montana,** stated that they stand in strong support of SB 4. He went on to say that in his opinion it recognizes two things, one the inherent risks in the recreational aspects of the things they sponsor and two, personal responsibility. He concluded that they felt it was the right track and a good bill.

**Kirk Bushman, on behalf of himself and the Billings Motorcycle Club, Billings,** gave some background information regarding his organization. He went on to say that SB 4 would benefit outdoor recreation in Montana and that all persons involved in those events participate in a responsible manner. **Mr. Bushman** informed the Committee that in most cases participants were at less risk than most due to requirements imposed by organizers of the events. He went on to point out the various activities and events held across the state and talked about the inherent risks involved in these activities and events. **Mr. Bushman** then discussed the economic factors of the events and the rising costs of insurance coverage. He concluded by urging a do pass on SB 4.

**Dave Arbenz, Prickly Pear Sportsman's Association, Helena,** spoke in support of SB 4. **Mr. Arbenz** provided written testimony which is attached as Exhibit 1.

**EXHIBIT**(jus06a01)

**John Halter, Halter Motor Sports Ranch, Fort Benton,** talked about his family owned business. He then discussed motorcycle clubs, how long they have been around, the growing number of interested participants and spectators and the fact that they do not have protection from frivolous law suits. **Mr. Halter** went on to talk about the inherent risks involved in this sport and what he felt his responsibilities were to protect all involved and what the State should do to help. He continued by discussing the costs involved in defending against frivolous law suits and the fact that individuals were getting nervous about sponsoring events because of this fact. **Mr. Halter** stated he strongly supported the bill.

**Dean Christiaens, Big Sky Racers Edge Magazine,** stated that what they are looking at is to put common sense back into the way people look at promoters of events and racing in Montana. He went on to give the background of motor sports in the State. **Mr. Christiaens** spoke regarding motor sports being a family event not just an adult event. He concluded by saying that these events could be jeopardized by frivolous lawsuits and the bill would put common sense language into the legal system.

**Barbara Ranf, Montana Chamber of Commerce,** stated that the Chamber of Commerce supported SB 4, as if recognizes the inherent risk of participating in recreational activities. She went on to say the SB 4 would place limits on the liability but would not eliminate liability. She concluded by urging support of the bill.

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 25}*

**Opponents' Testimony:**

**Jed Fitch, Montana Trial Lawyers Association,** spoke in opposition to SB 4. **Mr. Fitch** provided written testimony which is attached as Exhibit 2. **Mr. Fitch** also provided the Committee with a list of the statutes exempted from the bill, attached as Exhibit 3.

[EXHIBIT\(jus06a02\)](#)

[EXHIBIT\(jus06a03\)](#)

*{Tape: 1; Side: A; Approx. Time Counter: 25 - 29.3}*

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 5.8}*

**Further Proponent Testimony**

**SEN. BROWN** stated that she was standing in support of inherent risk legislature this legislative season. She went on to say

that she supports the idea behind **SEN. HANSEN'S** bill. **SEN. BROWN** read an e-mail to the Committee she had received which she felt was pertinent to inherent risk. She concluded by asking that the Committee pass SB 4.

**Bob Jordan, Certified Recreational Therapist and licensed outfitter**, stated he strongly supported SB 4. He went on to say the bill was not about insurance rates it was about being able to be insured at all.

**Darwon Stoneman, Glacier Raft Company**, spoke in support of SB 4. **Mr. Stoneman** provided written testimony which is attached as Exhibit 4. **Mr. Stoneman** also provided written testimony submitted by Tracey Knutson.

[EXHIBIT\(jus06a04\)](#)

[EXHIBIT\(jus06a05\)](#)

**Robin Cunningham, speaking on behalf of the 684 members of the Fishing Outfitters Association of Montana**, stated that like the other proponents they stand strongly in support of SB 4. He went on to say that by federal law he must have liability insurance. He then gave an example of an incident which had happened while he was guiding a fly fishing trip.

**Ronda Carpenter-Wiggins, Montana Snowmobile Association**, stated that even though their immunity and liability is already codified to some extent in the law, they wished to extend their support to SB 4.

**Jean Johnson, Montana Outfitters and Guides Association**, gave some background for these small businesses and stated that they hoped some inherent risk legislation will be passed by the present legislature and that they support SB 4.

**Bob Worthington, Administrator, Montana Municipal Insurance Authority**, stated that this organization is a self-insurance company that insures 120 incorporated cities and towns across the State. He went on to say they are not really an insurance company, they are a self-insurance organization supported by the taxpayers of the incorporated cities and towns. **Mr. Worthington** discussed the problems organizations were dealing with because they were being unable to provide insurance or were being priced out the market. He continued that there was a need for legislation that would manage inherent risk which would allow some defense and relief to the taxpayers of every community.

**Stuart Doggett, Montana Innkeepers**, stated that tourism is a big industry in the State. He proceeded to discuss the income

generated by the non-residents who visit the State and the amount of revenue they generate. **Mr. Doggett** concluded by stating they like SB 4 and hope that it is passed.

**Aimee Grmoljez, Montana Tourism Coalition**, stated that they support SB 4 and the concept behind it.

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. CROMLEY** inquired of **SEN. HANSEN** regarding language in the bill. **SEN. CROMLEY** referred to subsections 1 and 2, then proceeded to Subsection 3, asked about the two classes of activities and the fact that it only put responsibility on competitors. **SEN. HANSEN** replied that there was a difference. He went on to say that the events and the recreational activities were primarily the same and the risks are still there.

**SEN. CROMLEY** asked **SEN. HANSEN** if the intent was to exclude non-competitive recreational activities from sub paragraph 3. **SEN. HANSEN** indicated that it was not.

**SEN. CROMLEY** asked **SEN. HANSEN** about a reference by Mr. Cunningham to an acknowledgment of risk form and his concern that the bill would do away with the practice of using that form and if he would agree with that assumption. **SEN. HANSEN** deferred to **John Halter** for a response to the question. **Mr. Halter** replied that every participant, no matter what age, must sign a release on the entry form. He went on to say that there would be no reason they would want to change. He then replied that SB 4 would simply be an additional form of defense. He concluded by saying that the line between competitive nature, outdoor recreational activities and non-competitive activities needed to be clarified.

***{Tape: 1; Side: B; Approx. Time Counter: 5.8 - 27.2}***

***{Tape: 2; Side: A; Approx. Time Counter: 0 - 1.8}***

**SEN. O'NEIL** inquired of **Jed Fitch** if the bill would be lowering the liability of someone or increasing the liability and would the bill nullify a release from liability form. **Mr. Fitch** responded that the bill did not lower the risk of liability.

**SEN. O'NEIL** asked **Mr. Fitch** if it would increase the risk of liability. **Mr. Fitch** replied that he did not believe it would.

**SEN. MCGEE** asked **SEN. HANSEN** if he wanted a definition of inherent risk defined in the bill. **SEN. HANSEN** replied that he did not want to exclude the definition. He went on to say that his hopes were that both bills would unite.

**SEN. MCGEE** inquired of **Ms. Lane** if there was a codification clause in the bill which would coordinate it with HB 61. **Ms. Lane** informed **SEN. MCGEE** that there was not. She went on to say there was a codification instruction but not a coordination instruction.

**SEN. MCGEE** asked **SEN. HANSEN** if he wanted a coordination instruction added to his bill referencing HB 61. **SEN. HANSEN** replied that it would be fine with him.

**SEN. MCGEE** inquired of **REP. BROWN** if she felt that there should be a coordination instruction in her bill. **REP. BROWN** answered that she agreed.

**SEN. MANGAN** asked **SEN. HANSEN** if there was a definition for recreational activity and how far reaching the bill would be. **SEN. HANSEN** deferred to **REP. BROWN**. **REP. BROWN** responded that her bill and **SEN. HANSEN'S** bill were looking at the recreational activities that were not already codified. She went on to say that as recreational activities change so will what is provided throughout the State.

**SEN. HANSEN** talked about specifications in current law on specifics and asked **Mr. Fitch** if it was his contention that it would be alright as long as it was specified, or if he had a problem with the inherent risk in general. **Mr. Fitch** responded that when inherent risk is specific and detailed it would be known by the participant and the provider. He went on to say that when dealing with something nonspecific such as this particular bill it would be impossible to generate a specific inherent risk list.

**SEN. MANGAN** asked **Mr. Fitch** if the bill was simply inherent risk on whitewater rafting if he would support the concept or if he would still oppose it. **Mr. Fitch** replied that if the bill was specific and had a specific description of what the inherent risks were, he would not find the bill objectionable.

**SEN. ELLINGSON** asked **REP. BROWN** about imposing upon the organizer of an event the responsibility of listing the inherent risks involved, having the participant sign an acknowledgment of those risks, if she would have a problem with the concept. **REP. BROWN** answered that it was already codified in law that outfitters were

required to tell participants things about what they would be doing. She went on to say that in the professionalism for industry standards providers do tell participants about the risks involved. **REP. BROWN** then stated that Montana was one of two states that did not recognize release language.

**SEN. ELLINGSON** inquired of **REP. BROWN** if the responsibility for notification of inherent risk should not be put on the sponsors and organizers of events who know exactly what the inherent risks would be. **REP. BROWN** responded that it would be a good idea until someone forgot to mention one particular risk. She concluded by saying that the final determination should be left to the court system.

**SEN. PERRY** asked **Mr. Fitch** how he would define the responsibility of a willing participant in a recreational activity that would involve inherent risk of injury or death. **Mr. Fitch** answered by saying that the willing participant would have the duty to listen to and take direction from the guide or person or persons in charge of the event or activity. He continued by saying that the guide or responsible party would be responsible for doing his or her job in a safe and prudent manner.

**SEN. PERRY** then asked **Mr. Fitch** if there should be prior knowledge of inherent risks in the activities of participants. **Mr. Fitch** replied that a person with no experience would not know the inherent risk of the activity if they were not informed of that risk.

**SEN. MCGEE** asked **Bob Worthington** if one of the two bills passed, there was a definition in code for inherent risk, if insurance rates might modify. **Mr. Worthington** responded that if the legislation did pass the bill, it would give them a defense to give to the communities that provide activities with inherent risk to mitigate claims, thereby possibly making insurance more available. He went on to say he could not speak to the cost of the insurance.

**SEN. MCGEE** referred the same question to **Greg Van Horssen**. **Mr. Van Horssen** stated what would happen is that a companies rates and premiums would be based upon loss experience. He then stated that should costs go down, he would assume there would be a commensurate reduction in rates.

**CHAIRMAN WHEAT** asked **REP. BROWN** if there was a distinction between providers, organizers and sponsors. **REP. BROWN** stated that she did not believe there was, it would depend on the entity involved.

**CHAIRMAN WHEAT** referred to SB 4, Page 1, Lines 28 and 29 and asked **REP. BROWN** if the language would take away any responsibility for the provider to inform participants of the inherent risks involved. **REP. BROWN** stated that she believed that people know that there are risks. She went on to say that when you take away the risks it would alter and hurt Montana's recreational industry. She concluded by saying that she did not believe we should be altering anything, we should be informing but not altering.

**CHAIRMAN WHEAT** indicated that his question was more to the duty on the part of the organizer, if they had knowledge of a way to either eliminate, alter, control or lessen a risk that they should have a duty to do so. **REP. BROWN** replied that she believed the organizer did have the duty. She went on to say that most providers would inform individuals of the varying degrees of risks involved in various activities.

**CHAIRMAN WHEAT** referred to Page 1, Section 1, Lines 21 and 22 and asked **REP. BROWN** how a participant is to be aware of all of the inherent risks of the activity if the person they paid to take them on the trip told them. **REP. BROWN** responded that industry standard practices state that the provider would inform the guests of the inherent risk factor, as they are obligated to do so.

*{Tape: 2; Side: A; Approx. Time Counter: 1.8 - 28.3}*

**Closing by Sponsor:**

**SEN. HANSEN** stated that there was a difference between activities and sports. He went on to say that both SB 4 and HB 61 were good bills and that if they could be united it would be great and he would support it wholeheartedly. **SEN. HANSEN** continued saying that the bill would not take anyone's right away to sue for neglect or poor judgment, but what it would do is create fairness. He concluded by asking that the Committee support the bill.

*{Tape: 2; Side: B; Approx. Time Counter: 0 - 1.1}*

**HEARING ON SB 3**

**Opening Statement by Sponsor:** **SEN. KEN (KIM) HANSEN, SD 17, HARLEM**, opened the hearing on SB 3, Revise laws on uninsured motorists. **SEN. HANSEN** stated that SB 3 would put a squeeze on uninsured motorists in Montana. He then talked about the statistics on the number of tickets given out in the State for no



insurance in one year. He went on to say the bill was tailored after a bill from Chicago, Illinois. **SEN. HANSEN** then explained how Chicago's program worked and how they had reduced their number of uninsured motorists. **SEN. HANSEN** explained to the Committee SB 3 and penalties for accumulated violations. He concluded by talking about the Fiscal Note.

**Proponents' Testimony:**

**Greg Van Horssen, State Farm Insurance Company**, talked about statistics, the impact of uninsured motorists and potential fixes. He discussed past attempts to address uninsured motorists. He went on to say that SB 3 was a way to begin to fix the problem. **Mr. Van Horssen** stated that this bill was reasonable and cost effective and asked for strong support of SB 3.

**Jacqueline Lenmark, American Insurance Association**, stated that she was there to stand in strong support of SB 3. **Ms. Lenmark** talked about her experiences working with the problem of uninsured motorists. She went on to say that this bill was thoughtful, well drafted and a cost effective approach to the problem.

**Opponents' Testimony:** None.

**Informational Testimony:**

**Dean Roberts, Administrator of the Motor Vehicle Division, Department of Justice**, stated that they administer the mandatory liability laws in Montana. He informed the Committee that he was there to answer any questions regarding the Fiscal Note or anything else they might want to know.

**Questions from Committee Members and Responses:**

**SEN. MCGEE** talked about the Fiscal Note and asked **SEN. HANSEN** if he had considered the technical note and how they would put in place due process or an administrative hearing system within the context of the bill. **SEN. HANSEN** replied that he had not.

**SEN. CROMLEY** asked **SEN. HANSEN** in regard to the random sampling if 1 out of 100 would be contacted or 1 out of 1,000, as he did not see the information, and if he could tell him what percentage of the drivers would be contacted. **SEN. HANSEN** replied that he could not; that it would be left up to the Department.

**SEN. CROMLEY** asked **Mr. Roberts** the same question. **Mr. Roberts** responded they would use 10% the first year as a random sample and every year thereafter it would be 5%. He explained they used

the 10% because it was a new program and that people were going to have to understand what the program was all about, therefore, a bigger sample the first year would get the word out that someone is looking at whether or not individuals have liability insurance or not.

**SEN. CROMLEY** asked **Mr. Roberts** if one out of ten would be randomly sampled. **Mr. Roberts** stated that he was correct.

**SEN. CROMLEY** asked **Mr. Roberts** if they were testing one out of ten of all drivers in the State, did they really need Section 2 of the bill. He went on to say he did not understand why there was specific reference to the persons who had a prior record of non insurance, as it would be the same percentage. **Mr. Roberts** indicated that he was correct and stated that they would make sure that a certain number of those contacted would be persons who had prior records for not having liability insurance.

**SEN. CROMLEY** referred to the fact that in actuality it was not a random sampling and that maybe they should only have Section 2 and not Section 1. He went on to ask if maybe they should limit the sampling to only those persons who had a record of noncompliance. **Mr. Roberts** stated that he would suggest that they do a random sample of a number of drivers, noting that it would not be random, then somehow make sure that the persons who had prior records would be singled out.

**SEN. LASLOVICH** asked **SEN. HANSEN** if he would consider it a friendly amendment if the Committee decided to address technical note number 2 in the Fiscal Note. **SEN. HANSEN** responded that he would.

**SEN. LASLOVICH** further asked **SEN. HANSEN** why the difference in days 45 versus 30, why not just have it be 45 days. **SEN. HANSEN** indicated that the reason it was that way was that individuals would get notification in 30 days and if the Department did not hear from them in 45 days, they would send a certified letter stating that they did not have insurance.

**SEN. LASLOVICH** then inquired of **SEN. HANSEN** why the bill did not say that if the individual did respond to the inquiry regarding insurance within 45 days, their registration would be suspended. **SEN. HANSEN** replied that he would not have a problem with that amendment.

**SEN. MANGAN** referred **SEN. HANSEN** to subpart 2 of section 1 and asked if they were basically sending out notices to ten percent of all of the registered vehicles requesting them to send verification of their insurance and that those individuals had 45

days to get their information back. **SEN. HANSEN** indicated that he was correct.

**SEN. MANGAN** asked **SEN. HANSEN** how they were going to get notices to the individuals within the three levels of previous offenders. **SEN. HANSEN** referred the question to **Dean Roberts**. **Mr. Roberts** replied that the previous offenders would be part of the ten percent. He went on to say that the problem was that there could not be two random drawings. He then stated that they could do one random drawing and then do another sample that would say that out of the category of folks that have the listed problems select three percent, which would solve the problem.

*{Tape: 2; Side: B; Approx. Time Counter: 1.1 - 28.6}*

*{Tape: 3; Side: A; Approx. Time Counter: 0 - 0.7}*

**SEN. MANGAN** asked **Mr. Roberts** how this would affect vehicles with lifetime registrations. **Mr. Roberts** replied that it would not have any bearing on them.

**SEN. O'NEIL** asked **Mr. Roberts** how the Department would handle the situation of someone moving and not receiving the inquiry regarding proof of insurance. He further asked if that persons would be considered guilty of not having insurance irregardless. He then asked what assurance they would have that this would not happen. **Mr. Roberts** replied that if the individual did not respond within the time frame, he would have to pay the fine to have his registration reinstated and show proof of insurance.

**SEN. O'NEIL** asked **Mr. Roberts** if there was a statute that required an individual to keep the Department notified of his address for a vehicle that had been permanently licensed. **Mr. Roberts** indicated that he did not know, but probably not.

**SEN. O'NEIL** then inquired of **Mr. Roberts** if there was any law requiring him to have liability insurance on a vehicle which was setting parked in his backyard and not being driven. **Mr. Roberts** responded that if he got a card in the mail on that registration he would have to have proof of liability insurance or his registration would be suspended.

**SEN. MANGAN** asked **Mr. Roberts** how this bill would affect those individuals that winter in Arizona, leaving uninsured vehicles in their garages. **Mr. Roberts** stated that it could create a problem. He went on to say that there were a couple of issues with the reporting system and what would be helpful would be some kind of rule making ability. He then talked about vehicles which are only used at certain times and the need to address that issue.

**SEN. MCGEE** asked **SEN. HANSEN** how the law was going to be enforced. He went on to ask if word would go out to the Highway Patrol and law enforcement agencies of the counties and cities, so that they would be on red alert and looking for those individuals with suspended registrations. **SEN. HANSEN** said he would hope that was not what would happen. He then referred the question to **Dean Roberts**. **Mr. Roberts** stated that the registration records would be marked suspended so that law enforcement would know that the registration was suspended at the time that they pulled a vehicle over.

**SEN. MCGEE** then inquired of **Mr. Roberts** if the Highway Patrol would be reviewing the suspended registration list every day. **Mr. Roberts** replied that they would not.

**SEN. MCGEE** asked **Mr. Roberts** how this bill was going to get vehicles off of the road that do not have insurance. **Mr. Roberts** stated that there was no way to guarantee getting vehicles off of the road. It was a fear factor to inspire more individuals to obtain insurance.

**SEN. CROMLEY** asked **Mr. Roberts** if there were any other bills addressing the problem. He further asked, if when a vehicle was registered, proof of insurance was required. **Mr. Roberts** replied at the present time by virtue of registering a vehicle, an individual was saying they had insurance on that vehicle. He went on to say that they did not make anyone show the proof of insurance card. **Mr. Roberts** stated that there was a bill in the House that would make an individual show the card and put the insurance information on the title of the vehicle. He concluded by saying that there was also another bill that was being introduced which would require individuals found guilty of no insurance be required to get SR 22 insurance.

**CHAIRMAN WHEAT** asked **Mr. Roberts** the number of the bill in the House. **Mr. Roberts** replied that it was HB 63 he thought.

**SEN. O'NEIL** asked **Mr. Roberts** if it was the law that he needed to carry liability insurance on it all of the time. **Mr. Roberts** replied that the law indicates that if the vehicle is operational or registered it needs insurance.

**SEN. O'NEIL** asked **Mr. Roberts** if a vehicle had a mechanical defect if the owner would be relieved of the necessity to have insurance on it. **Mr. Roberts** stated that if the vehicle were parked or driven on the public roadways it must have insurance. He went on to say that a vehicle parked on a street, whether operational or not, would still need to be insured.

**SEN. O'NEIL** then asked **Mr. Roberts** if the vehicle was not operational to run on the highway, if it would need to be insured until such time as it was made operational. **Mr. Roberts** replied that the law was not clear on that issue. He went on to say what they were interested in were the individuals driving down the street without insurance.

**Closing by Sponsor:**

**SEN. HANSEN** stated that he hoped the Committee would see fit to pass the bill and make all Montanans drive on the right side of the law.

*{Tape: 3; Side: A; Approx. Time Counter: 0.7 - 16.7}*

**EXECUTIVE ACTION ON SB 30**

**Motion:** **SEN. CROMLEY** moved that SB 30 DO PASS.

**Discussion:**

**SEN. LASLOVICH** stated that the Fiscal Note had not been received.

**SEN. CROMLEY** withdrew his Motion to Do Pass.

**EXECUTIVE ACTION ON SB 122**

It was determined that the bill would be held until the following day as the proposed amendment had not been received.

**EXECUTIVE ACTION ON SB 37**

**Motion:** **SEN. MANGAN** moved that SB 37 DO PASS.

**Discussion:**

**CHAIRMAN WHEAT** discussed the proposed amendment and indicated that he felt it cleared up what was trying to be accomplished with the bill.

**Motion:** **SEN. WHEAT** moved that SB 37 BE AMENDED.

**Discussion:**

**SEN. O'NEIL** asked if the asset was stock certificate, if the custodian would have to keep track to make sure that the stock was not going down and, if it did, would the company be negligent. **CHAIRMAN WHEAT** referred to their packet of information and pointed out the section regarding custodial and safekeeping agreements and stated that the amendments would comply with the appropriate portion of the Financial Examiners Handout.

**SEN. CROMLEY** stated that he felt the amendment took care of the situation because now they are protected from the loss resulting from the acts of the custodian. He went on to say a loss in value would not be covered, it would only be losses created by the acts of the custodian.

**SEN. MCGEE** referred to the State Auditor's Office and read that portion of the letter which referred to the intent of the bill which was to insure that the indemnification agreement be in place.

**SEN. O'NEIL** stated that he felt that the negligent act should be spelled out unless the terms of the agreement indicated otherwise.

**CHAIRMAN WHEAT** indicated that he felt the amendment solved the problem that was dealt with when the bill was heard the first time. He went on to say he felt comfortable with the current language.

**Vote: Motion that SB 37 BE AMENDED passed 11-1 by voice vote with O'NEIL voting no.**

**Motion/Vote: SEN. MANGAN moved that SB 37 DO PASS AS AMENDED. Motion carried 11-1 by voice vote with O'NEIL voting no.**

**ADJOURNMENT**

Adjournment: 12:14 P.M.

---

SEN. MIKE WHEAT, Chairman

---

MARI PREWETT, Secretary

MW/MP

Additional Exhibits:

**EXHIBIT ([jus06aad0.PDF](#))**